

FY 2024

CONGRESSIONAL BUDGET JUSTIFICATION

BLACK LUNG DISABILITY TRUST FUND

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BLACK LUNG DISABILITY TRUST FUND

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BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

APPROPRIATION LANGUAGE

Such sums as may be necessary from the Black Lung Disability Trust Fund (the "Fund"), to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (6), and (7) of the Internal Revenue Code of 1986; and repayment of, and payment of interest on advances, as authorized by section 9501(d)(4) of that Act. In addition, the following amounts shall be available from the Fund for fiscal year [2023] 2024, *to remain available through September 30, 2025*, for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): not to exceed [\$42,194,000] \$44,059,000 for transfer to the Office of Workers' Compensation Programs, "Salaries and Expenses"; not to exceed [\$38,407,000] \$41,178,000 for transfer to Departmental Management, "Salaries and Expenses"; not to exceed [\$353,000] \$368,000 for transfer to Departmental Management, "Office of Inspector General"; and not to exceed \$356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury. (*Department of Labor Appropriations Act, 2023.*)

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EXPLANATION OF LANGUAGE CHANGE

The Department requests two-year availability to increase flexibility for program execution. The annual uncertainty in the appropriations timing results in delayed hiring and rushed execution of contracts. The multi-year availability would reduce the impact of short-term continuing resolutions at no cost to the annual appropriations bill. This change would also enhance staff oversight of the programs they are administering.

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AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2022 Revised Enacted		FY 2023 Revised Enacted		FY 2024 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	0	\$0	0	\$0	0	\$0
Definite	0	\$79,760	0	\$81,310	0	\$85,961
Sequestration Reduction Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985	0	-\$4,545	0	-\$4,634	0	\$0
Indefinite	0	\$220,049	0	\$342,936	0	\$366,906
<i>Subtotal, Appropriation</i>	<i>0</i>	<i>\$295,264</i>	<i>0</i>	<i>\$419,612</i>	<i>0</i>	<i>\$452,867</i>
Bond Repayment and Payment on Advances	0	\$2,432,886	0	\$2,686,556	0	\$2,922,226
B. Gross Budget Authority	0	\$2,728,150	0	\$3,106,168	0	\$3,375,093
Bond Repayment and Payment on Advances	0	-\$2,432,886	0	-\$2,686,556	0	-\$2,922,226
C. Budget Authority Before Committee	0	\$295,264	0	\$419,612	0	\$452,867
Bond Repayment and Payment on Advances	0	\$2,432,886	0	\$2,686,556	0	\$2,922,226
D. Total Budgetary Resources	0	\$2,728,150	0	\$3,106,168	0	\$3,375,093
E. Total, Estimated Obligations	0	\$2,728,150	0	\$3,106,168	0	\$3,375,093

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SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2023 Revised Enacted	FY 2024 Request	Net Change
Budget Authority			
General Funds	\$0	\$0	\$0
Trust Funds	\$419,612	\$452,867	+\$33,255
Total	\$419,612	\$452,867	+\$33,255

Full Time Equivalents			
General Funds	0	0	0
Total	0	0	0

Explanation of Change	FY 2024 Change							
	FY 2023 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	0	\$76,676	0	\$2,468	0	\$0	0	\$2,468
Operation and maintenance of equipment	0	\$0	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	0	+\$76,676	0	+\$2,468	0	\$0	0	+\$2,468
B. Programs:								
Payment of Bond Interest	0	\$116,448	0	\$12,984	0	\$0	0	\$12,984
Payment of Interest on Advances	0	\$103,080	0	\$11,050	0	\$0	0	\$11,050
Processing of BLDTF Mandatory Workload	0	\$0	0	\$4,634	0	\$0	0	\$4,634
Adjudication Program Increase	0	\$0	0	\$1,558	0	\$0	0	\$1,558
OWCP DCMWC Staffing Requests	0	\$0	0	\$500	0	\$0	0	\$500
OWCP DCMWC Systems Upgrades	0	\$0	0	\$125	0	\$0	0	\$125
Programs Subtotal	0	\$0	0	+\$30,851	0	\$0	0	+\$30,851
Total Increase	0	+\$296,204	0	+\$33,319	0	\$0	0	+\$33,319
Decreases:								
A. Built-Ins:								
To Provide For:								
Built-Ins Subtotal	0	\$0	0	\$0	0	\$0	0	\$0
B. Programs:								
BLDTF Benefits	0	\$123,408	0	-\$64	0	\$0	0	-\$64
Programs Subtotal	0	\$123,408	0	-\$64	0	\$0	0	-\$64

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Explanation of Change	FY 2024 Change							
	FY 2023 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Total Decrease	0	+\$123,408	0	-\$64	0	\$0	0	-\$64
Total Change	0	+\$419,612	0	+\$33,255	0	\$0	0	+\$33,255

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BUDGET AUTHORITY BY OBJECT CLASS

(Dollars in Thousands)

	FY 2022 Revised Enacted	FY 2023 Revised Enacted	FY 2024 Request	Diff. FY 2024 Request / FY 2023 Revised Enacted
Departmental Management	35,455	36,218	41,178	4,960
Treasury Administrative Costs	336	336	356	20
Office of Inspector General	323	333	368	35
OWCP- Division of Coal Mine Workers	39,101	39,789	44,059	4,270
<i>Subtotal</i>	<i>75,215</i>	<i>76,676</i>	<i>85,961</i>	<i>9,285</i>
Benefits	110,495	123,408	123,344	-64
Payment of Bond Interest	103,221	116,448	129,432	12,984
Payment of Interest on Advances	2,057	103,080	114,130	11,050
Total	290,988	419,612	452,867	33,255

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AUTHORIZING STATUTES

Public Law / Act	Legislation	Statute No. / US Code	Expiration Date
PUB. L. 91-173	Federal Coal Mine Health and Safety Act of 1969, (now called Federal Mine Safety and Health Act of 1977), Title IV, Black Lung Benefits Act, PUB. L. 91-173, Black Lung Benefits Revenue Act of 1977, PUB. L. 95-227, as amended in 1981 by PUB. L. 97-119	30 U.S.C. 901, <i>et seq.</i>	N/A
PUB. L. 107-275	Black Lung Consolidation of Administrative Responsibility Act and Section 3615 of the Emergency Supplemental Appropriations Act, 2003, PUB. L. 108-83	30 U.S.C. 801 note	N/A
PUB. L. 110-343	Emergency Economic Stabilization Act of 2008	26 U.S.C. 4121, 9501	N/A

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APPROPRIATION HISTORY					
(Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2014					
Base Appropriation...1/	\$316,559			\$312,305	0
2015					
Base Appropriation...2/	\$321,087			\$321,092	0
2016					
Base Appropriation...3/	\$341,467	\$341,466	\$341,467	\$313,192	0
2017					
Base Appropriation...4/	\$371,641			\$382,739	0
2018					
Base Appropriation...5/	\$418,801	\$415,162		\$401,322	0
2019					
Base Appropriation...7/ 8/	\$328,182		\$328,182	\$326,364	0
2020					
Base Appropriation...8/ 9/	\$365,240	\$365,240		\$317,552	0
2021					
Base Appropriation...10/	\$382,991			\$346,787	0
2022					
Base Appropriation...9/ 11/	\$331,505	\$331,505		\$331,505	0
2023					
Base Appropriation...12/	\$404,620			\$394,896	0
2024					
Base Appropriation	\$443,138				0

^{1/} Appropriation includes sequestration amount of -\$4,254 and does not include amounts for exchange of assets transactions of \$397,383 for bond principal and \$401,000 for short-term advances.

^{2/} Appropriation includes sequestration amount of -\$4,701 and does not include amounts for exchange of assets transactions of \$395,769 for bond principal and \$541,696 for short-term advances.

^{3/} Appropriation includes sequestration amount of -\$4,502 and does not include amounts for exchange of assets transactions of \$396,213 for bond principal and \$585,000 for short-term advances.

^{4/} Appropriation includes sequestration amount of -\$4,894 and does not include amounts for exchange of assets transactions of \$393,126 for bond principal and \$910,000 for short-term advances.

^{5/} Appropriation includes sequestration amount of -\$4,680 and does not include amounts for exchange of assets transactions of \$385,968 for bond principal and \$1,285,000 for short-term advances.

^{6/} Appropriation includes sequestration amount of -\$4,397 and does not include amounts for exchange of assets transactions of \$117,606 for bond principal and \$1,900,000 for short-term advances.

^{7/} This bill was passed by the Senate. It was passed out of the House Subcommittee but was not reported out of the House Committee or by the full House.

^{8/} Appropriation includes sequestration amount of -\$4,235 and does not include amounts for exchange of assets transactions of \$118,895 for bond principal and \$1,870,000 for short-term advances.

^{9/} This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or full Senate Appropriations Committee.

^{10/} Appropriation includes sequestration amount of -\$4,239 and does not include amounts for exchange of assets transactions of \$120,015 for bond principal and \$2,322,600 for short-term advances.

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^{11/}Appropriation includes sequestration amount of -\$4,397 and does not include amounts for exchange of assets transactions of \$117,606 for bond principal and \$1,900,000 for short-term advances.

^{12/}Appropriation includes sequestration amount of -\$4,634 and does not include amounts for exchange of assets transactions of \$123,663 for bond principal and \$2,562,893 for short-term advances.

BLACK LUNG DISABILITY TRUST FUND

OVERVIEW

The Black Lung Disability Trust Fund (BLDTF) was established by the Black Lung Benefits Revenue Act of 1977, as amended December 29, 1981, companion legislation to the Black Lung Benefits Reform Act of 1977, to shift fiscal responsibility for Black Lung benefit payments from the Federal Government to the coal industry. The BLDTF is jointly administered by the Secretaries of Labor, Treasury, and Health and Human Services and provides for payment of benefits, administrative expenses, and interest on advances related to the operation of the program. Resources for the Trust Fund are derived from: an excise tax on each ton of coal sold and used domestically; reimbursements from responsible mine operators for interim payments; interest, fines, and penalties assessed to responsible mine operators; and short-term advances from the Treasury.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), enacted April 7, 1986, raised excise tax rates from \$1.00 to \$1.10 per ton on underground-mined coal and from 50 to 55 cents per ton on surface-mined coal, in either case not to exceed 4.4 percent of the sale price, through December 31, 1995. The Omnibus Budget Reconciliation Act of 1987 continued that tax structure until 2014. The Emergency Economic Stabilization Act of 2008 (the EES Act), enacted on October 3, 2008, authorized the restructuring of the BLDTF debt by:

- (1) extending then-current coal excise tax rates of \$1.10 per ton on underground-mined coal and \$0.55 per ton on surface-mined coal until December 31, 2018 (and then reverting to the 1978 levels, or \$0.50 per ton on underground coal, and \$0.25 per ton on surface coal);
- (2) providing a one-time appropriation for the BLDTF to repay the market value of parts of the outstanding repayable advances and accrued interest; and
- (3) refinancing the remainder of the outstanding debt through the issuance of zero-coupon bonds.

Pursuant to the EES Act, these amounts were to be retired using the BLDTF's annual operating surpluses until all of its remaining obligations had been paid. Pre-payments were to be made when operating surpluses exceeded the amount of the zero-coupon bond, and short-term borrowing authority was to be utilized if operating surpluses were not sufficient. However, the Trust Fund has run at a deficit virtually since its inception. The Trust Fund's primary income source is an excise tax on coal mined in the United States for domestic sale. Though the tax rates have varied over the years, the Inflation Reduction Act of 2022 permanently extended the rate at \$1.10 per ton on underground-mined coal and \$0.55 per ton on surface-mined coal.

In 2008, a portion (\$6.4 billion) of the Trust Fund's legacy debt was forgiven, and the remainder (\$6.5 billion) was refinanced. But excise tax receipts, which have decreased since 2008 due to a decline in domestic coal production, are insufficient to service that debt. As a result, the Trust Fund relies on annual advances from Treasury. The appropriations language for the BLDTF authorizes indefinite "such sums as may be necessary" for payment of benefits and for payments of interest. It also authorizes definite amounts which are appropriated for administration of the

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program. In FY 2022, due to declining coal excise tax revenues, receipts covered only 95 percent of administrative costs and benefits payments, with interest payments on advances and bond repayments being covered by borrowing authority. In FY 2023, with the now permanent excise tax rates, current estimates project that excise tax receipts will cover all administrative costs and benefits payments and approximately 42 percent for interest payments on advances and bond repayments. In FY 2024, current estimates project that excise tax receipts will cover all administrative costs and benefits payments and approximately 35 percent for interest payments on advances and bond repayments. Advances to the BLDTF from short-term borrowing authority are projected to increase to cover the balance of amounts necessary for the obligations of the indefinite appropriation for interest payments on advances and bond repayment costs and, and for repayment of advances to service the debt.

The Division of Coal Mine Workers' Compensation (DCMWC) has engaged in two separate initiatives to protect the Trust Fund. The first is a Final Rule governing the BLDTF's payment of medical benefits, which was issued on June 14, 2018. This rule adopted modern payment formulas for physicians, hospitals, and other providers that are derived from the formulas used in the Medicare program. The revised regulations became effective on August 31, 2018. Most of them, including those governing payments for medical equipment, prescription drugs, and inpatient medical services, applied immediately. The regulations governing payment of professional medical services and outpatient medical services had a later applicability date of April 26, 2020, so that a new computer system could be developed to process these bills. Implementation of these regulations has yielded more than \$43 million in savings to the Trust Fund through the end of FY 2022.

The other initiative designed to protect the Trust Fund is a reevaluation of the self-insurance process. Generally, the miner's last coal mine employer is liable for benefit payments. Coal companies must obtain either commercial insurance or authorization from the Department to self-insure their liabilities under the Act. The Department is responsible for authorizing coal companies to self-insure. As part of this process, the Department establishes security amounts that each authorized self-insurer must meet. In recent years, these security amounts have been inadequate to fully cover obligations of coal companies that have defaulted on Black Lung benefit payments. Liability for these defaulted payments then rests with the BLDTF. Accordingly, the Department is developing new regulations to ensure that self-insured coal companies sufficiently secure their Black Lung Benefit Act liabilities. A Notice of Proposed Rulemaking was published on January 19, 2023.

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BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	FY 2022 Revised Enacted	FY 2023 Revised Enacted	FY 2024 Request	Diff. FY24 Request / FY23 Revised Enacted
Activity Appropriation	290,988	419,612	452,867	33,255
FTE	0	0	0	0

Introduction

The Trust Fund pays all Part C Black Lung benefits, including monthly compensation and medical benefits, when no coal mine operator can be held liable for payments, or the liable operator refuses to pay. Monthly compensation payments are based on 37.5 percent of the GS-2, Step 1 salary level. The Trust Fund also pays for the costs incurred by the Department of Treasury collecting the coal excise tax and managing the Trust Fund, for the costs of the appeals processed to the Office of Administrative Law Judges (OALJ) and the Benefits Review Board (BRB), legal costs associated with the Solicitor of Labor (SOL), and for costs incurred by the Office of Inspector General (OIG). Black Lung benefits for claims filed on or before December 31, 1973, are paid under the appropriation for Special Benefits for Disabled Coal Miners, also referred to as Black Lung Program Part B.

Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2019	\$326,364	0
2020	\$317,552	0
2021	\$346,787	0
2022	\$331,505	0
2023	\$394,896	0

FY 2024

In order to meet estimated obligations for Part C of the Black Lung Program, the FY 2024 President's Request level is \$452,867,000. The amounts for definite obligations include the following amounts to be transferred from the BLDTF to General Funds:

- \$44,059,000 for DCMWC's costs associated with administering the Black Lung Program, which are discussed in the Federal Programs for Workers' Compensation (FPWC) Salaries and Expenses section of the budget. The amount includes \$625,000 in additional resources requested by OWCP in the Federal Programs for Workers' Compensation Salaries and Expenses chapter of the budget submission.
- \$41,178,000 for the administrative costs of the Departmental Management (DM) account, which covers Adjudication activities and legal services, and includes a program increase

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of \$1,558,000 for Adjudication activities that are discussed in the DM section of the budget.

- \$368,000 for OIG administrative costs; and
- \$356,000 for the Department of the Treasury.

At the Request level, the Black Lung program will focus on the budget priorities and Enterprise Risk Management emphasized in the President's Management Agenda.

Estimated amounts for indefinite obligations include:

- \$123,344,000 for benefit payments.
- \$129,432,000 for payments of bond interest; and
- \$114,130,000 for interest on short-term advances.

The requested amount does not include amounts for repayment of bond principal and advances, which are exchange of assets transactions. These include \$124,924,000 for payment of bond principal and \$2,797,302,000 for repayment of estimated short-term advances. In addition to coal tax receipts and other income, an estimated \$3,071,231,000 in short-term advances will be required to fund obligations and exchange of assets.

The BLDTF budget request will support the President's vision of delivering excellent Federal services and improving customer experience while managing the business of Government to build back better by providing the necessary funding to advance equity initiatives to support underserved stakeholder communities; enhance the overall customer experience, handle a significant incoming workload volume projected to reach 6,500 claims in FY 2024; advance modernization and standardization initiatives designed to optimize overall efficiency; ensure Trust Fund beneficiary maintenance; and continue to maintain a balanced approach to claims inventory management.

FY 2023

In FY 2023, DCMWC will establish foundational support for its equity and customer experience objectives. In doing so, DCMWC will develop and disseminate customer service surveys, identify underserved stakeholder communities using census tract data and other tools, conduct targeted outreach, and develop and improve data collection tools – including exploring methods for the voluntary collection of demographic data and working to streamline program forms and make them more accessible.

Additionally, DCMWC will direct its resources and strategies towards maximizing productivity and efficiency by continuing to streamline work processes, and making all efforts to protect the BLDTF by developing new self-insurance regulations. DCMWC will use informed analysis and information technology (IT) innovations to enhance performance and keep pace with the significant incoming claims volume, ensure accurate and timely adjudication of benefits, and modernize program operations.

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FY 2022

In FY 2022, the DCMWC continued to address the complex operational challenges presented by the COVID-19 pandemic, while handling a significant incoming workload volume. In addition, the program advanced modernization and standardization initiatives designed to optimize overall efficiency; enhanced its commercial insurance and self-insurance databases; and maintained a balanced approach to claims inventory management with a special emphasis on reducing the number of claims pending at the start of the fiscal year by the end of the fiscal year.

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WORKLOAD AND PERFORMANCE SUMMARY				
	FY 2022 Revised Enacted		FY 2023 Revised Enacted	FY 2024 Request
	Target	Result	Target	Target
Black Lung Disability Trust Fund				
Strategic Goal 3 - Improve Administration of and Strengthen Worker Safety Net Programs				
Strategic Objective 3.1 - Ensure timely and accurate income support when work is unavailable by strengthening benefits programs and program administration.				
BLDTF WL Number of Claims Received 1	6,500[p]	5,066	6,000[p]	6,500[p]
BLDTF WL Number of Trust Fund Beneficiaries 2	11,074[p]	10,475	9,600[p]	8,700[p]
BLDTF WL Number of Beneficiaries Paid by Responsible Operators 3	6,178[p]	6,187	6,400[p]	6,600[p]

Legend: (r) Revised (e) Estimate (base) Baseline -- Not Applicable TBD - To Be Determined [p] - Projection

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Workload and Performance Narrative

In FY 2024, the requested resources will continue to provide for the payment of benefits and ongoing medical treatment costs and the administrative expenses of Black Lung Part C program operations, including adjudicatory and litigation costs. The Division of Coal Mine Workers' Compensation (DCMWC) expects to pay monthly compensation and/or ongoing medical treatment benefits from the Black Lung Disability Trust Fund to an estimated 8,700 beneficiaries in FY 2024.

Additionally, DCMWC will monitor cash and medical treatment payments disbursed in the private sector by coal mine operators to approximately 6,600 additional beneficiaries under Part C; and will receive an estimated 6,500 incoming claims in FY 2024.